Editor's note: Reconsideration denied by order dated March 12, 1975

SCHWALBE NUKWAK

IBLA 75-67 Decided February 10, 1975

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Native allotment application AA-7991.

Affirmed.

1. Alaska: Native Allotments

An application for an Alaska Native allotment must be rejected where the applicant failed to initiate use and occupancy prior to December 18, 1971.

APPEARANCES: Henry W. Cavallera, Esq., Alaska Legal Services Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Schwalbe Nukwak filed an Alaska Native allotment application under 43 U.S.C. §§ 270-1 through 270-3 (1970), in which he recited that he had used and occupied the land on a seasonal basis continuously from 1964 to the present for subsistence fishing and berry picking. The application was signed October 28, 1971 and filed by the Bureau of Indian Affairs on his behalf on April 3, 1972. A field examination report failed to show any human use of the tract under application. Relying on that report, the Alaska State Office, Bureau of Land Management, by decision of June 7, 1974, rejected the application. This appeal resulted.

By affidavit dated December 27, 1974, Mr. Nukwak said the following:

1. That I did not start using my land until it was staked in 1973 because I did not think I could use it until it was staked. However, in 1973 and 1974 I used the land each year for fishing.

2. When I signed the allotment application and evidence of occupancy I did not understand that I said I used the land since 1964. This is a mistake.

Sometimes I don't understand all these papers and don't understand a lot of English.

3. I still want this land and intend to keep using it in the coming summers.

[1] Section 18 of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1617 (Supp. III, 1973), repealed the Native Allotment Act. It follows that use and occupancy initiated on land after December 18, 1971, may not serve to initiate a preference right claim under the Native Allotment Act and that the purported initiation of use after the repeal is a nullity. Furthermore, since a preference right under the repealed Native Allotment Act could have been gained only by actual use and occupancy for the requisite period prescribed by the Native Allotment Act, no rights could be initiated prior to actual use or occupancy by the mere filing of an application indicating an intention to effect use and settlement in the future.

Therefore, pursuant to the authority delegated by the Secretary of Interior to the Board of Land Appeals, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge